

Meeting Information**AGENDA****SUBCOMMITTEE**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence.

These items will be available for review at City Hall, Room 244, Reception Desk.

Special Meeting

Thursday, May 3, 2001 at 10:00 a.m.

City Hall, Room 263

Members: Commissioners Eisenberg, McGoldrick

Clerk: Gregoire Hobson

SPECIAL AGENDA

(There will be public comment on each item)

**GOVERNMENT
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1. Call to Order and Roll Call
2. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane
3. Discussion and approval of the process for selecting and contracting with the consultant(s) for the Sphere of Influence Study
4. Future Agenda Items
5. Public Comment on Items not on the Agenda
6. Adjournment

IMPORTANT INFORMATION

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San Francisco Local Agency Formation Commission

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MINUTES

07-27-01 P.M. - 15 - 70

Subcommittee Meeting
Thursday, May 3, 2001 at 10:00 A.M.
City Hall, Room 263

Chairperson: Commissioner Eisenberg
Members: Commissioner McGoldrick

Clerk: Gregoire Hobson

SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 10:10 a.m.

Members Present: Commissioners Eisenberg and McGoldrick

2. Discussion and adoption of the proposed scope of work for the Sphere of Influence Study and analysis associated with providing public power in the City and County of San Francisco, including the creation and maintenance of a Municipal Utility District for San Francisco and San Francisco-Brisbane

Gloria L. Young, Executive Officer, introduced the scope of work for the Sphere of Influence Study that is before the Subcommittee. At the last LAFCo meeting, the Subcommittee indicated that they wanted to review the scope of work and recommend any changes, modifications, and/or the approval of the document to SF LAFCo at its meeting of May 18. This is an informal setting for the Subcommittee to ask questions and for the Executive Officer to respond and also to get public comment on the actual scope of work.

Public Comment

Dana Dilworth, Resident of Brisbane, stated that the City of Brisbane has done a study with the intention of understanding what MUD will produce, but what was presented to the people was basically a civic lesson in public power. One of the series of facts that they used was reports from 1997-1998, which today would seem inaccurate because of the PG&E bankruptcy. Unless it is the desire of this LAFCo to have an understanding of all public power possibilities before us, it seems just the study of the Municipal Utility District should be done. Secondly, somebody with financial expertise should figure in how a bankruptcy fits into the information. She personally supports anybody who has been approved by APPA.

Bernie Choden, previous Commissioner, has comments that he read to LAFCo on his first reading of the proposed scope of work. He thinks the Sphere of influence can include other entities such as Brisbane, Alameda, and Berkeley and it should be less San Francisco centered when you address a study. His recommendation is to change the study's title to include Brisbane and to possibly include Alameda and Berkeley, as other entities may be interested in joining. This is much too brief an outline. The consultants should have a more detailed scope of work.

Commissioner Eisenberg asked for the City Attorney's input.

Dorji Roberts, City Attorney, stated that the scope of work for the Sphere of Influence Study does include Brisbane as stated on the last page, Item B1. The responses that the Commission receives from the potential consultants should address the possibility of Brisbane and San Francisco. Whether the scope should be broadened to include other entities such as Alameda and Berkeley is a policy decision for the Commission.

Bernie Choden, previous Commissioner, handed in a revised scope of work document for the Sphere of Influence Study outlining his comments and suggestions.

Commissioner Eisenberg asked the Executive Director to make changes to the title to say "LAFCo Sphere of Influence Analysis of San Francisco/Brisbane."

Gloria L. Young, Executive Officer, indicated that she did run the broad-brush of the scope of services past the APPA at the time staff drafted this scope of work. The scope of work responds to the Motion that was adopted by LAFCo in November, where it was specific to San Francisco. It includes the Municipal Utility District, including the Brisbane area. It includes some of the information that Mr. Choden spoke about. In addition, on April 23 and 24, the Executive Officer attended a two-day conference sponsored by APPA in San Francisco. The Executive Officer went through the study with the City Attorney's Office and made sure that our broad-brush effort did in fact include an engineering and feasibility study that addresses some of the legal aspects associated with a Sphere of Influence Study that is

looking at public power. LAFCo can amend the scope of work to include Mr. Choden's comments.

Commissioner Eisenberg stated that he would send along Mr. Choden's comments to the full Committee, but does not intend to change anything at this time.

Gloria L. Young, Executive Officer, advised that the Subcommittee will be issued a retyped copy with the changes italicized so they have it in advance of the next LAFCo meeting.

No further comments were made on the Sphere of Influence Study.

Public Hearing closed.

Commissioner Eisenberg reiterated that Gloria L. Young, Executive Officer, stated that this Sphere of Influence is a procedural guideline to a consultant. He has had input from other people stating their concerns as to what they think is going on. He has been told that the energy crisis could be solved if every home in the State of California were insulated. He believes that the Sphere of Influence does not specifically address residential or conservation measures.

Gloria L. Young, Executive Officer, stated that Item B1 addresses conservation efforts and that Supervisor Newsom introduced a resolution that requested that LAFCo include energy conservation efforts in its scope of work for the Sphere of Influence Study. The Executive Officer responded that conservation was included in the scope of work for the Sphere of Influence Study it was included.

Commissioner Eisenberg would like to add to Item B1 the words "and residential conservation measures." He stated that an intern from USF, who had done a survey of non-profits, found that the impact of increasing energy costs on non-profits was significant. Chair Eisenberg went to the University of Oregon in Eugene. He spoke on deregulation and had an opportunity to talk to the head of the Municipal Utility District in Eugene. Eugene and a lot of Oregon have public power, and they love it. But the head of the Eugene Municipal Utility District said that they were doing a survey of schools and found that one of the impacts on schools is that they are laying-off employees because of their electric bills. He doesn't know where in the scope of work the impact on public and social services is specified.

Gloria L. Young, Executive Officer, stated that she was not sure if this issue was specifically outlined in the scope of work.

Commissioner Eisenberg stated that he would like to add this issue to wherever the Executive Officer thinks it is appropriate. He would like the consultant to specifically look into specifically the impact of public power options on public, educational, and non-profit social services.



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Public Comment Reopened.

Bernie Choden, previous Commissioner, stated that the City does have an official Conservation Policy produced by Lois Scott about twenty years ago. It has been adopted and ignored. It has analysis regarding insulation, conservation, and what should be done that hasn't been done. There is also a Women's Energy Association, headed by Barbara Barkovich, an advisor on energy to United Kingdom and France.

Public Comment Closed.

Commissioner McGoldrick stated that we should look into the collateral consequences of public power options. We should understand what is going on now and what we hope will happen if we embark upon the public purchase of PG&E. He thinks we are covered under Roman Numeral II that lists the seven important aspects that should be addressed by the study. He is satisfied and wants to make sure we include the anecdotal situations and quantify them. What effect will all this have on the local economy, people, and the City? He hopes that potential consultants would look at these issues. He would be happy to do a more detailed scope that looks at detailed socioeconomic factors.

Commissioner Eisenberg stated that we should add a next number and a next Roman Numeral that the consultant analyzes the effect of the PG&E bankruptcy. We need to look at their failure to pay \$3,000,000 in property tax. That should be part of the Sphere of Influence Study. The second item should look at both the franchise agreement and the Wheeling Agreement and their present status in the PG&E bankruptcy. The third item should be that the study should also review the status of the Raker Act. The fourth item should be the City is now losing \$20,000,000 a year because of the Turlock and Modesto contracts. He wants to make sure these areas are covered specifically and asks that the consultant specifically address these areas.

Chair Eisenberg Moved that the scope of work for the Sphere of Influence Analysis as provided to LAFCo by the Executive Officer, and amended as previously stated, shall be forwarded with a PASS recommendation to the Commission.

Commissioner McGoldrick Seconded.

Vote:

Commissioner Goldrick: AYE
Commissioner Eisenberg AYE
Motion: Passed to the Commission

3. Discussion and approval of the process for selecting and contracting with the consultant(s) for the Sphere of Influence Study.

Gloria L. Young, Executive Officer, read the recommendations for selecting and contracting with the Consultant for the Sphere of Influence Study. She indicated that consultants in the area have contacted our office and attached to her memorandum is a list of potential consultants. We would notify the public by advertising in the newspaper, posting on our web site, and outreach advertising. In addition, we would post in Brisbane to make sure we have an inclusive list of consultants, should the Commission decide to approve this process. At this time, it is before the Subcommittee for consideration.

Commissioner Eisenberg asked if this recommendation was drafted with the City Attorney's cooperation and participation.

Gloria L. Young, Executive Officer, stated that she drafted the proposal and that Paula Jesson, Deputy City Attorney, did review it.

Chair Eisenberg asked if this procedure is consistent with state law and permissible?

Dorji Roberts, City Attorney, stated that he has no knowledge that it is improper and stated that if there had been a problem, Paula Jesson, Deputy City Attorney, would have brought it to the Executive Officer's attention at that time. He has no problem with the procedure.

Chair Eisenberg asked if there are City or State provisions that the consultant will have to comply with.

Dorji Roberts, City Attorney stated that he does not believe so, but there may be disclosures required under the Conflict of Interest laws.

Chair Eisenberg asked for the process of selection of a consultant.

Dorji Roberts, City Attorney, stated that it would be the action of the full Commission to decide which consultant to select.

Chair Eisenberg asked whether it would be unusual for the full Commission to interview people as opposed to the Subcommittee?

Dorji Roberts, City Attorney, stated that selection could be done in a number of ways. Sometimes it is done through the Subcommittee, through a separate selection or evaluation panel, or an individual member that is appointed to work with the Executive Officer to review the proposals. The Commission has broad discretion as to how they wish to handle the evaluation process.

Chair Eisenberg asked whether it is the Executive Officer's job to recommend someone to LAFCo?

Dorji Roberts, City Attorney stated that the Commission could ask the Executive Officer to do so. The Commission has the discretion to set up a different process.

Chair Eisenberg stated that he prefers that the Executive Officer provide LAFCo with a list of the potential consultants and that the Subcommittee make the recommendation instead of the Executive Officer.

Supervisor McGoldrick stated the procedure he has most commonly seen throughout the City of San Francisco has been that the staff would provide recommendations. We could ask the staff to provide one, two or three recommendations and the Subcommittee would then provide input that would be forwarded to the full Commission in the form of a recommendation that might narrow down the multiple recommendations to one or more.

Chair Eisenberg asked the Executive Officer to provide LAFCo with evaluations as to whether the consultant complies with the various criteria, and the recommendation will come from the Subcommittee.

Gloria L. Young, Executive Officer, concurred.

Commissioner McGoldrick asked if the criteria for choosing from a list of potential consultants would include an evaluation of their depth of experience or is there a qualification process?

Gloria L. Young, Executive Officer, stated she would have all of the consultants that submitted an RFP or an informal proposal for this project provide a checklist of consistencies with not only the scope of study, but the amount (price) they recommend, and if that meets our needs.

Public Comment:

No public comment.

Commissioner Eisenberg moved that the proposal set forth as Item 3 and the procedures set forth in the Executive Officer's proposal be recommended to the Commission for passage, with the exception that it should be reworded to show that the procedure will be that the Executive Director shall evaluate the consultants in compliance with APPA and other relevant criteria. The Executive Officer will present that evaluation to the Subcommittee, which will make its recommendation for final decision by the Commission.

Commissioner McGoldrick Seconded.

Vote:

Commissioner McGoldrick: AYE
Commissioner Eisenberg: AYE

PASSED

4. Future Agenda Items

Gloria L. Young, Executive Officer, stated that unless the Subcommittee wishes to meet again, there are no other agenda items before the Subcommittee until after the Commission approves the scope of study and then another Subcommittee Meeting will be set up at that time.

Public Comment

No Public Comment.

5. Public Comment on Items not on the Agenda

Chair Eisenberg stated that the chair of this Commission next Wednesday is going to announce his candidacy for the position of City Attorney. It is his present opinion that there is no conflict of interest if he remains the Chair of LAFCo. He also believes that there are consistent opinions from the City Attorney's Office that there is no conflict of interest for a Chair of a Commission to run for public office consistent with first amendment rights and other considerations. He would ask if well before May 18, that the City Attorney's Office provide him with an opinion if there is a conflict of interest. If the City Attorney is of the opinion that there is a conflict of interest or appearance of impropriety, he will resign.

Dorji Roberts, City Attorney, stated that he would ask the City Attorney's Ethics experts to look into this matter and will reply to Chairman Eisenberg.

6. Adjournment: Time 11:00 a.m.

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AGENDA SUBCOMMITTEE

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting
Friday, July 13, 2001 at 2:00 p.m.
City Hall, Room 263**

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Members: Commissioners Eisenberg, McGoldrick

Clerk: Monica Fish

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SPECIAL AGENDA
(There will be public comment on each item)

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1. Call to Order and Roll Call
2. Approval of Minutes of May 3, 2001
3. Discussion and possible action regarding responses to Request for Proposal (RFP) No. 001 for Sphere of Influence Study for public power
4. Future Agenda Items
5. Public Comment on Items not on the Agenda
6. Adjournment

IMPORTANT INFORMATION

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MINUTES

Subcommittee Meeting
Friday, July 13, 2001 at 10:00 a.m.
City Hall, Room 263

Chairperson: Commissioner Eisenberg
Members: Commissioner McGoldrick

Alternate: Commissioner Gonzalez

Clerk: Monica Fish

SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 2:05 p.m.

Members Present: Chair Eisenberg and Commissioner McGoldrick

Members Absent: None

2. Approval of Minutes dated May 3, 2001.

Commissioner McGoldrick moved to approve the May 3 Minutes; Chair Eisenberg seconded.

Public Comment

No Public Comment

ACTION: May 3, 2001 Minutes approved without objection.

3. Discussion and possible action regarding responses to Request for Proposal (RFP) No. 001 for Sphere of Influence Study for public power.

Gloria L. Young, Executive Officer stated that the process today would be to interview the two consultants who submitted proposals in response to the RFP. She suggested that the Commissioners interview the consultants in the order of the date the proposals were received. The first submission was from E. J. Simpson received on June 22. The second was from Project Design Consultants received on June 25. The deadline for receipt of proposals was June 25 at 5:00 p.m. Both parties are present.

Chair Eisenberg asked if the Subcommittee would be scoring the proposals.

Gloria L. Young, Executive Officer stated that when the SF LAFCo chose to interview the consultants, it was decided that the Subcommittee would review and score the proposals. She will present her review and answer Commission questions after the consultants have presented their proposals.

Chair Eisenberg stated that the scoring is set forth in the Request for Proposal so the Commission will assume that the applicants know the scoring system.

Gloria L. Young, Executive Officer stated that the scoring was set forth in the RFP and the consultants who submitted the proposals should be aware of the process. The RFP was available not only to the twenty-six consultants that indicated a desire to receive the RFP, but was also posted on the web, and the notice of the RFP was advertised in the newspaper according to law.

Chair Eisenberg asked the City Attorney to discuss the question of confidentiality in today's hearing.

Dorji Roberts, Deputy City Attorney stated that the meeting today was noticed as an open meeting. As a preliminary matter, LAFCo has adopted the Sunshine Ordinance in which Section 67.24(e) reflects that responses to RFP's normally need not be disclosed until after a contract has been awarded. The Commission had decided instead to go with the process of forming a Committee to review the responses to the RFP and then to make recommendations to the full Commission. This Committee is indeed a policy body for purposes of the Sunshine Ordinance. According to the Brown Act, Government Code Section 54957.5 and also under the Sunshine Ordinance Section 67.7(b), a requirement is stated that written material distributed to the Commissioners in connection with an agenda item in an open session must be made publicly available. Any member of the public may obtain copies of the responses to the RFP.

E. J. Simpson, Utility Consultant stated that he responded to and complied with each RFP item and limited his responses to those items. People on his team have



all been involved in the acquisition of facilities in PG&E territory that led to the startup of a utility from scratch.

Chair Eisenberg asked Mr. Simpson for clarification.

E. J. Simpson stated that there was a community that had no public power and that a group of people wanted to investigate public power. His team worked with a committee to form a Municipal or Public Utility District. They provided the expertise to acquire those facilities, inventoried the facilities, set the price for acquisition, established personnel billing rates, and everything that is associated with operation of a municipal utility that is selling electricity to end users. One of the facilities was acquired in court by eminent domain. They negotiated the power contracts, worked with the finance people when the bonds were sold, and were an integral part of the entire project from start to finish. Finish was a utility in business, personnel delivering power, and the power company that was there was gone.

Communities that were changed into Public Utility Districts were Weaverville, CA, Trinity County, in 1982 and Hayfork, CA on December 30, 1987. A community that was converted to a MUD was in the Susanville area, Lassen County on approximately June 1, 1988. The difference between a Public Utility District (PUD) and a Municipal Utility District (MUD) is that a PUD cannot sell electricity in incorporated city limits, and a MUD can sell electricity in an incorporated city and in unincorporated areas. If you have a city involved, you would need a MUD. He was the director of a municipal utility in Redding from 1974-1981. They developed plans for power generation and power contracts. Redding is one of the few cities today that does not have rolling black outs and has reasonably low power rates compared to PG&E.

Mr. Simpson stated that he was not sure what the budget limits of the RFP were as it did not state a maximum amount. He responded \$90,000 to answer all the questions in the RFP, but the RFP did not ask for:

- What would annual power costs for five years be?
- What would maintenance and operation costs be on a five- to ten-year basis?
- What would be debt-service cost?
- What would be the startup cost?

It would require another \$90,000 for him to bring in a program that would answer these questions that would tell the Commission what this is going to cost. He cannot guarantee the price it will cost to take over PG&E facilities, but based on the experience he has, he has acquired many millions of dollars in PG&E facilities over the years other than the three stated.

An estimate could be provided that tells the Commission what a public power entity really looks like operating in the City of San Francisco with a MUD. This

estimate would strengthen and provide the Commission with a lot more information to make a decision. This can be done by adding underwriters or legal counsel that provide information on exactly what your interests will be and what it would look like in this area. A Certified Public Accountant Company that is knowledgeable of utilities and provides a report would require additional funds. He does not believe this scope of work provided for this item. He is pleased to provide the Commission with the information as requested on the RFP. If that is all the Commission is asking for, he is pleased to do so. However, the Commission could expand the RFP to provide for more information that leads into the business and operation of a utility.

Mr. Simpson stated that although he has his office 200 miles from San Francisco, he has been in San Francisco many times and has talked to various groups about power here. He is familiar with the transmission lines coming into San Francisco and is familiar with many of the problems as San Francisco has held elections to determine whether they want public power.

Chair Eisenberg asked Mr. Simpson about his experience from 1950 – 1974 working for PG&E.

Mr. Simpson stated that he worked for PG&E for twenty-five years in power line design and transmission line footings. He worked his way up to district manager in charge of maintenance and operation of natural gas and electric facilities in the Redding area that took in parts of three counties. When he left that position at PG&E on friendly terms, he had made the decision to work for the City of Redding that has a Public Utility they called a Municipal Utility that was under the control of the City Council. The difference is if you are a director operating a MUD, you answer to your five Board members. If you are operating a Municipal Utility, then the City Council has control. The difference is that the city has every responsibility, and with a MUD, they have one responsibility of power, unless LAFCo has added other items. The MUD that they established in Lassen was copied from the successful Sacramento Utility District established in 1947.

Chair Eisenberg asked what Mr. Simpson thinks is going to happen in the next five years if on November 6 the Municipal Utility District measure passes, and that five directors are elected to take over PG&E.

Mr. Simpson stated that in the first month those five directors would be in an interesting position because they own nothing but a franchise. Bond counsels, underwriters, legal counsels, and consultants would be brought in and asked if they are willing to work on a contingency basis. The reason you do not have public power more in PG&E territory is the risk public officials have to take to raise money. The first few months he would work hard as the Commission's consultant. He would be bringing in the same team that helped him do Lassen and secure lending provisions. Before they could secure a loan in Lassen, it was necessary to put up \$250,000 to the state to secure tax exempt funding.

Opponents to public power say that conversion to public power can not happen until the transmission lines are repaired or built to complete Hetch Hetchy. Changing the name of the entity does not mean you have to change the transmission. The same transmission line works the same if someone else owns it. You just keep paying PG&E's price. When you build your own transmission line, you should do a careful feasibility study to make sure that it will cost less every year to own your own transmission line than if you were to pay PG&E. When he joined the City of Redding, PG&E fed their transmission system. They eliminated PG&E's transmission system totally and built a transmission line to federal government facilities. PG&E would provide backup power if needed. Once they had the transmission, they built the generation system. That is what would happen in San Francisco in anywhere from two to five years. Once you have the price of facilities, it is easy to borrow the money. It is the period of time from when you are elected to when you take over the facilities that you do not have the funds.

Chair Eisenberg asked if the MUD would start a condemnation action against PG&E or negotiate.

Mr. Simpson stated that the eminent domain procedure is specific. You would do an enabling ordinance act to do the acquisition. Then you would talk to PG&E and say that you prefer to negotiate a deal. PG&E would say they are not for sale. An offer would then be made. The next procedure is if you take PG&E to eminent domain, consultants are going to argue for original cost less depreciation. That means the equipment that was put in thirty years ago cost \$100 to go in and now is depreciated for thirty years and its 80% depreciation will be gone and you leave the 20 percent to buy it. PG&E experts will argue reproduction cost new less depreciation.

Chair Eisenberg asked if Mr. Simpson's study would provide these figures, or is Mr. Simpson saying that the amount to do this study has not been called for in the RFP.

Mr. Simpson stated that he is just answering Chair Eisenberg's question as to what will happen in five years. The amount has not been called for in the RFP to complete this study.

Chair Eisenberg stated that the MUD consultants on one side would take original cost minus depreciation, and the PG&E experts will argue that what you have is replacement costs. There is a big difference between the two.

Mr. Simpson stated that both sides would prefer to not go to a jury. PG&E could beat MUD if their cost of acquisition is too high in the eminent domain. The only risk in this business is the price to take over PG&E facilities.

You can estimate maintenance and operation of a utility system within two percent. Before you can borrow money in the five-year period, you have to have a

power contract. There is low-cost power if you do long-term contracts. PG&E employees are transferred over and you do not make the savings in public power by lowering people's salaries. You just hire management.

In the first five years, you will be in business, operating, and you will have a long list of capital improvements to make. A question that will have to be answered in court if a MUD passes is whether the Hetch Hetchy power belongs to the people and a Municipal Utility District can use it, or does the power belong to the City of San Francisco.

Chair Eisenberg stated that he would assume that the Raker Act would have stronger enforcement in January based upon the charter amendment to the Board of Supervisors and the statements of many of the political figures. If the City prevails in the position that PG&E does not have the right to bring electricity into San Francisco and have direct access to Hetch Hetchy power, should the City enter into an agreement with the MUD to recognize that MUD is attempting to provide low cost electricity?

Mr. Simpson stated that he would expect the MUD and the City to cooperate and work together. If they did not, it would cost both entities.

He would like to be sure that we do not have to build another transmission line before we get Hetch Hetchy power into San Francisco that we are not getting now. Power will come from the same lines that they are coming from now.

Chair Eisenberg asked the City Attorney whether both of the applicants have each other's applications. If he asked one of the applicants about the other applicant's application, would there be a confidentiality problem?

Dorji Roberts, Deputy City Attorney stated that he does not know if the applicants have each other's application, but copies are available to them. Under the Brown Act and the Sunshine Ordinance any member of the public is entitled to have these proposals at this time.

Chair Eisenberg stated that it appears that after reviewing both applicant's qualifications that Project Design Consultants seems to specialize in LAFCo Sphere of Influence Studies, and Mr. Simpson specializes in setting up MUDs and public utilities.

Mr. Simpson stated that LAFCo requires a Sphere of Influence for each MUD and public utility. PG&E has always opposed the Sphere of Influence in other places where they have expanded the Sphere of Influence. He appears before LAFCo to argue for the feasibility, but he would not ordinarily draw the boundaries for the Sphere of Influence. County planners where he worked before would do that. Mr. Simpson would look at the electric facilities and say this is where the Sphere of Influence has to be.



Chair Eisenberg asked Mr. Simpson if he were to do Sphere of Influence studies, if he would be involved because he was the person that set up the district. Mr. Simpson is not someone who is a specialist in setting up LAFCo studies; he is a specialist in setting up power districts.

Mr. Simpson stated that was correct. If LAFCo were not doing power, he would not be a benefit to the Commission in setting up a district and providing information. If you were doing an electric entity, he would tell you where the substations are, where the transmission lines are, and whom the customers are that they can serve from those facilities.

Commissioner McGoldrick asked Mr. Simpson to describe his project staff and whom he might hire as sub-consultants.

Mr. Simpson stated that he has a small staff that includes his son who has been involved in the process and that he contracts staff when work comes in. He pulls people that are experts in other fields and will assure that the work will get done on schedule at the right price. Mr. Hamm, who was the Executive Director of the Street Light Association, would be part of his staff. He has acquired many streetlights from PG&E, some through eminent domain. Mr. Simpson stated that if were to fall behind schedule and would have to hire additional staff, he would request permission from LAFCo.

In doing the scope of work now he would not need additional help. If the RFP were expanded to include financing, he would hire Doug Charchenko, Sutro Vice President. As sub-consultants, he would hire Joe Hendricks who had worked with him on the other project and Dana Hall, Engineer in Saratoga.

Commissioner McGoldrick asked if Mr. Simpson's proposal included references for the work he has done for Lassen, Trinity and Hayfork.

Mr. Simpson stated that the references he provided on the RFP would know of the quality of his work.

Richard Miller, Project Design Consultants, 701B Street, Suite 800, San Diego, CA introduced Project Design Consultants, Wayne Seden Associates, and Joyce Crosthwaite, project manager for Project Design Consultants. Wayne Seden's group and Project Design Consultants comprise a team that represents two separate and distinct areas in expertise. The Project Design Consultants is the LAFCo link, while Seden's team possesses a national perspective on policy and technical issues associated with the energy industry.

Project Design Consultants is celebrating its 25th anniversary. Their firm is a multi-disciplinary engineering, planning and surveying firm with over 235 employees located in six offices in California, Oregon, and Arizona. With this broad group they



can draw upon a number of experts for GIS mapping, utility consulting and a number of other areas. He has been with the firm for over twelve years and heads their Public Policy Division. Joyce Crosthwaite and he met when they were both employed by the San Diego Local Agency Formation Commission in the early 1980s. He left LAFCo to become a planning consultant with one of his primary areas of expertise being LAFCo. His clients include several LAFCo's, special districts, cities, and private interests. His current job includes working for the San Diego LAFCo managing the Sphere of Influence Study for ninety-five special districts and advising the City of Newport Beach on several controversial annexations. He has been involved with many sphere studies. In 1994 Project Design Consultants won an American Planning Association award for a Sphere of Influence Study they did for Escondido, CA.

Ms. Crosthwaite was a former Assistant Executive Officer for the Orange County LAFCo. She has worked as a graduate assistant for the Little Hoover Commission and the Commission on Local Government Options. She was awarded an outstanding staff award at the time she worked for the Orange County LAFCo by the California Association of LAFCo's. Her current LAFCo clients include San Diego LAFCo, Orange County, Los Angeles County and Merced.

Mr. Miller stated that what is occurring is a response to deregulation and higher costs. Formation of MUD's was not an issue ten years ago. The creation of a MUD, the expansion of a City department, the creation of another alternative like a County Service Area is a long term commitment. What is facing the Commission here is a government structure issue. The decision has not been made as to the best way to proceed.

Chair Eisenberg asked the speaker to clarify why he stated that the issue is a proper governmental structure. There is a Municipal Utility District measure on the ballot that the LAFCo Commission has authorized.

Mr. Miller stated that there is not a lot of experience in California with the way a Municipal Utility District is set up and the best way for it to function. LAFCo people are generalists. One of the reasons that they have a technical expert on their team, Mr. Seden, is that he has the experience with the energy industry that could be of assistance with a Municipal Utility District.

Wayne Seden, Seden and Associates stated that their background is in the energy field, specifically the electric utility industry field. His experience is in construction and design of power plants going back to the days of General Atomic when they designed nuclear plants. He received his engineering experience at General Atomic and moved in to the area of evaluation of alternative energy sources. He worked for the Electric Power Research Institute where he did planning and evaluation for the development of new energy sources. He spent time working for utilities and other agencies that were involved in the energy field, the California Energy Commission in particular. His background includes experience in the policy,

technical issues and analysis of power plant design construction, business development, marketing, economic analysis, and assessment of energy supply and demand.

Mr. Seden stated that the major issue is the formation of the Public Utility District and the benefits and costs associated with that. Their strengths are not so much in the implementation, as it is in researching the problem and doing the analysis to give the Commission the best indication of the direction to take. He feels confident they can do this job based upon their experience with the organizations that have the knowledge from having formed their own public utility districts, municipal utility districts, and forming their own utility departments within the City government structure.

Chair Eisenberg asked the speaker if he or his associates have direct experience in San Francisco.

Mr. Seden stated that he does not have direct experience in San Francisco. He has worked in the past for Pacific Gas and Electric and for the Palo Alto Municipal Utilities.

Chair Eisenberg asked if his group has acquisition experience.

Mr. Seden replied that his group does not have direct acquisition experience. It is only through working with those utilities that they are knowledgeable about their experience.

Chair Eisenberg stated that they have a litigated question whether or not the MUD could go on the ballot prior to an EIR and referral to California Public Utilities Commission (CPUC). LAFCo passed a rule that is referred to as the "Alioto Rule" which in fact incorporated the language of the Las Tunas case. The "Alioto Rule" states that in the event that a MUD did not specify a particular utility (the Commission calls a "Shell MUD") and in the event that it was forwarded to LAFCo that it could go on the ballot. It was the consensus of legal opinion after that rule was adopted that in the event that MUD passes, MUD would then be required to have an Environmental Impact Report and proceed to the CPUC in the event that it were to acquire facilities. Chair Eisenberg asked Mr. Miller if he has heard of the Las Tunas case and is familiar with this issue.

Mr. Miller stated that in his twenty-year experience with LAFCo the way this is moving forward is unlike anything throughout the state.

Chair Eisenberg asked Mr. Miller if his area of expertise is in the other type of proceeding in which a MUD would come to a LAFCo and there might be annexation and formation questions. He asked if what they do is study the various entities that might be annexed and then determine whether or not there is an appropriate annexation. In this case, there is a minimal formation in which Brisbane has been

added onto the MUD and that has become a major question. The legislative counsel has said that if Brisbane opts out, the MUD would still proceed.

Mr. Miller stated that there are still legal and procedural requirements that the Commission will need to go through as a LAFCo. He agrees this is a unique circumstance, but the purpose of the RFP is to do a Sphere of Influence Study, and there are requirements in state law as to what that needs to look like. That, in terms of their approach is how they look at it, not so much as this is a formation application. At this point the Commission refers to it as a "Shell MUD" and that is how they view it. There is a district in which the boundaries are under consideration and level of service, types of service, funding, and financing are undetermined. The way a Sphere Study works is that an agency is formed, they come to LAFCo with boundaries, a budget, proposed staffing and more detail. An environmental review is an issue that will need to be addressed at some point if the Commission is adopting a Sphere of Influence line for a particular agency.

Chair Eisenberg asked Mr. Miller how he thinks it would happen if MUD passes in November and five members of the Board of Directors are committed by virtue of their promises to the electorate to proceed with acquisition of electrical facilities.

Mr. Miller stated that he sees how difficult it has been for SMUD and Lassen to start up and try to deal with the issues in terms of getting organized and provide a public function. He sees the difficulties with a number of other districts throughout the state. The critical issue from a LAFCo perspective is not to form a district that is a proliferation of one more district, but instead to form one that has the ability to deal with providing a service. The district should not be a public forum for people to register complaints regarding high-energy costs. He sees struggle in the initial period trying to get organized as any government agency would.

Chair Eisenberg stated that Mr. Simpson spoke specifically to the question as to how we get experts and whether they have to be brought in on a contingency aspect. He asked Mr. Miller if he has comments on how the experts would be obtained?

Mr. Miller stated that he agrees with Mr. Simpson that we are going to need more input into the process. He would like to go back to the comment that Mr. Simpson made about cost. You are going to have to find ways to negotiate a reasonable settlement with PG&E on the cost of the facilities that you would be acquiring. You will be acquiring distribution systems in the least, and how you arrive at those figures will be paramount to the success of this venture.

Gloria L. Young, Executive Officer stated that it is in the hands of the Subcommittee as to how to proceed. The Subcommittee has the scoring that was part of the RFP. She is prepared to give her report when appropriate.

Commissioner McGoldrick asked if reference checks would be done as noted under 3D of the outline of the criteria that would be used. He stated that the way in which the Subcommittee could judge the quality of recently completed projects other than through this interview would be through inquiries.

Gloria L. Young, Executive Officer stated that reference checks would be done once they were in the process of going through the actual contract with the selected consultant. If appropriate and if the Subcommittee recommends one of the firms to the full Commission for its meeting on July 27, during that interim period of time inquiries could be done.

Commissioner McGoldrick stated that the Subcommittee has been asked to judge the proposals under this point system today and he is inquiring as to how to proceed.

Gloria L. Young, Executive Officer stated that the RFP noted minimum qualifications--both of the firms had several years of experience. The RFP also noted project approach, the assigned staff, the experience of the firms, and sub-consultants. There were fifteen to thirty years of experience between the two firms. That is the basis she used for the approach to the point system.

She stated that the proposal requirements outlined in the RFP page 5, indicates that the proposals should contain the following information:

- Identification of the consultant
- Qualification and experience
- Percentage of time for each consultant to the project
- The approach and work steps
- Timing of the steps and final completion date
- Costs not to exceed

Mr. Simpson's proposal did not respond to any of the specific approaches of the work steps involved in the specific criteria outlined in the scope of work for the Sphere of Influence. Mr. Simpson's proposal does indicate who would be assigned to each of the steps identified in the RFP. In addition, a completion date was not stated, so she considers the proposal to be incomplete.

She would like to respond to Mr. Simpson's comments about the issue of cost analysis that would result in additional dollars. The RFP has been through the Subcommittee's review and LAFCo Commission, which amended the scope of work for the Sphere of Influence, and through public review. The RFP, Part 2 is reflective of what was approved and what Mr. Simpson has referred to. Incorporated in each one of the elements is the requirement of being able to provide the Commission with cost.

Chair Eisenberg stated that in Mr. Simpson's Executive Summary, he states that the project manager has reviewed and responded to all items in the RFP and assures the Executive Officer that all work will be completed with timelines as stated by the Executive Officer. Although he does not give a specific date, he indicates that he will complete the work by the required completion date. Mr. Simpson stated that if there was advanced and detailed accounting, that the amount of the contract is not adequate, so he would have to make an additional proposal. Chair Eisenberg stated that in the last meeting the Commission was talking about a budget that could go as high as \$300,000 or \$400,000 depending on what the Commission was asking for.

Gloria L. Young, Executive Officer stated that LAFCo agreed with staff not to include a fee. if the consultants responding to the RFP felt there was a need to have subcontractors do the various components such as legal or financial support, it would be included in the response to the RFP. That was the approach that was taken with the RFP. Her hope would be to have proposals that indicated what the costs were going to be.

The Executive Officer stated that Project Design Consultants provided approaches although not with sufficient detail. The proposal failed to provide a cost not to exceed and indicated that there would be a cost of \$104,300 plus expenses plus a ten percent above those expenses and requested an undetermined amount of LAFCo staff support. This is a particular concern to her because there is only a part-time support for LAFCo. The proposal also indicated that the rate was subject to change after June 30, 2001.

Her recommendation depending on LAFCo's timing and needs is that the Subcommittee recommend to the full Commission that they reissue the RFP. She was concerned that only two proposals were received. Requests to receive the Request for Proposal were received after the June 25 deadline.

Commissioner McGoldrick asked the Executive Officer if there are recommendations regarding the project staff, the quality of the staff, and experience of the firm.

Gloria L. Young, Executive Officer, stated that she did not have concerns regarding the staff that was recommended, only with the issues she had discussed.

Public Comment

Richard Ow stated that he hopes that the Sphere of Influence can encourage the City to obtain renewable energy. He is a senior and is concerned that the rate structure should consider the seniors and low-income people. He would like to see the evaluation of how the rate structure will be obtained. Since jobs will be created, he hopes that first priority will be given to San Francisco residents if qualified.

Jeff Mills, Bay Area resident asked if the cost benefit of renewable energy versus traditional technology could be presented to the electorate.

Public Comment Closed

Commissioner McGoldrick asked if it would be possible to give the Subcommittee more time in order for more proposals to come in. He is disappointed to see only two proposals.

Chair Eisenberg stated that the Commission wants to have the RFP study completed prior to the election. Project Design Consultants has said they would be done October 2, which would give the electorate a month. Mr. Simpson said that he would be done at the point the Executive Officer indicates. If the process were reopened, the study would not be completed prior to the election. He thinks the Subcommittee has to proceed.

He would like to put both of these applicants together because they do things that are valuable to the process. Project Design does not do this type of LAFCo proposal. At the point that the MUD is created they would then come in and do an analysis for MUD, which would be at the Environmental Impact Report stage. Or they would have come to LAFCo had the Commission not passed the "Alioto Rule," and they would have given LAFCo a Sphere of Influence at that point. He thinks Mr. Simpson's qualifications are suited to what the Commission needs at this point. Project Design agrees they do not have San Francisco experience. Mr. Simpson has been zeroing in on what the Commission is doing. He has been spending his life talking about acquiring facilities from PG&E and spent twenty-five years working for PG&E. Project Design's experience is excellent, but Mr. Simpson's experience is point direct to what the Commission is trying to do.

Chair Eisenberg stated that he would give Mr. Simpson a score of 95 and Project Design a score of 85.

Commissioner McGoldrick asked the Executive Officer when Mr. Simpson would have to complete the study if he were selected.

Gloria L. Young, Executive Officer stated that the RFP indicated a date of October 10.

Mr. Simpson stated that the RFP indicates that from the date of award he has thirty-three workdays and guaranteed that he would meet that schedule.

Commissioner McGoldrick stated that the RFP states that the work would begin August 27 and be completed by October 10.

Mr. Simpson stated that he guarantees to meet that schedule.



Commissioner McGoldrick asked Project Design if there is a ceiling in the cost estimates they provided.

Mr. Miller stated that what they add on for reimbursables is approximately ten percent of the total which would be another \$10,000. The rate sheet in his response to the RFP describes what the reimbursables consist of.

Gloria L. Young, Executive Officer stated that in the Project Design Consultant's report, they indicated the use of LAFCo project staff and we have limited LAFCo staff. She is not only the Executive Officer of LAFCo, but also the Clerk of the Board. The part time staff that we have is limited. If that is something that has to be added to the budget, it needs to be discussed today.

Commissioner McGoldrick asked if Mr. Simpson and Mr. Miller anticipate having to use project staff.

Mr. Simpson stated that his figure did not include help from staff although they will be asking for contracts that they will be responding to. They will be asking for the agreements between PG&E and the City to deliver Hetch Hetchy power and the agreement between San Francisco and Modesto/Turlock. They did not anticipate that LAFCo staff would be doing work for them.

Mr. Miller stated he would request LAFCo staff to secure the agreements that were referenced in the RFP that they assume staff already had.

Chair Eisenberg's scoring is as follows:

Mr. Simpson, Utility Consultant:

Project Approach	25
Assigned Project	15
Experience of Firm	20
Oral Interview	20
Budget	15
Total	95

Project Design Consultants:

Project Approach	25
Assigned Project	20
Experience of Firm	15
Oral Interview	20
Budget	5
Total	85

Commissioner McGoldrick's scoring is as follows:

Mr. Simpson, Utility Consultant:

Project Approach	20
Assigned Project Staff	20
Experience of Firm	15
Oral Interview	19
Budget	15
Total	89

Project Design Consultants:

Project Approach	20
Assigned Project Staff	20
Experience of Firm	12
Oral Interview	20
Budget	14
Total	86

Chair Eisenberg stated that the Subcommittee would recommend Mr. Simpson to the Commission because his qualifications are absolutely necessary for the first phase of the scope of work. Both applicants have acknowledged that the full Sphere of Influence cannot be done for the amount indicated on the RFP. He encourages Project Design to come back and help the Commission at the second stage.

Commissioner McGoldrick stated that there is a stipulation in the timeline and a penalty for reaching the timeline because it is crucial to the process.

Commissioner McGoldrick motioned without objection that this Subcommittee would recommend Mr. Simpson to the full Commission; Chair Eisenberg seconded.

ACTION: Passed without objection

4. Future Agenda Items

No future agenda items.

5. Public Comment on Items not on the Agenda

No Public Comment

6. Adjournment: The meeting adjourned at 3:47 p.m.

**San Francisco
Local Agency
Formation Commission**

DOCUMENTS DEPT.

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. 415.554.7702
Fax. 415.554.5163

SEP 19 2001

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**AGENDA
SUBCOMMITTEE**

Note: Each item on the Consent or Regular agenda may include explanatory documents, including Executive Officer report and public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.

**Special Meeting
Friday, September 21, 2001 at 10:00 a.m.
City Hall, Room 263**

Members: Chairperson Eisenberg and Commissioner McGoldrick

Clerk: Monica Fish

SPECIAL AGENDA

(There will be public comment on each item)

1. Call to Order and Roll Call
2. Approval of Minutes of July 13, 2001
3. Discussion and action regarding the contract between the SF LAFCo and E. J. Simpson, Utility Consultant for the LAFCo Sphere of Influence Analysis of Providing Public Power to the City and County of San Francisco and Other Potential Areas
4. Future Agenda Items
5. Public Comment on Items not on the Agenda
6. Adjournment

IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to LAFCo, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of LAFCo members. Any written comments should be sent to: Committee Clerk of LAFCo, San Francisco Board of Supervisors, 1, Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the Committee Clerk by that time may be taken directly to the hearing at the location above.

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San Francisco Local Agency Formation Commission

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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MINUTES

Subcommittee Meeting
Friday, September 21, 2001 at 10:00 a.m.
City Hall, Room 263

Chairperson: Commissioner Eisenberg
Members: Commissioner McGoldrick

DOCUMENTS DEPT.

Clerk: Monica Fish

OCT 11 2001

SPECIAL AGENDA
(There will be public comment on each item)

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1. Call to Order and Roll Call

The meeting was called to order by Chair Eisenberg at 10:09 a.m.

Members Present: Chair Eisenberg and Commissioner McGoldrick

Members Absent: None

Gloria L. Young, Executive Officer introduced SF LAFCo's new legal counsel, Nancy Miller from Hyde, Miller, Owen & Trost; Donald Maynor, Esquire, and Fred Yanney. Donald Maynor is here representing us today.

2. Approval of Subcommittee Meeting Minutes dated July 13, 2001.

Commissioner McGoldrick moved to approve the July 13, 2001 Subcommittee meeting minutes; Chair Eisenberg seconded.

Public Comment

No Public Comment

VOTE:

AYES: Commissioner McGoldrick and Chair Eisenberg

NOES: None

ACTION: July 13 Subcommittee Minutes passed without objection.

3. Discussion and action regarding the contract between the SF LAFCo and E. J. Simpson, Utility Consultant for the LAFCo Sphere of Influence Analysis of Providing Public Power to the City and County of San Francisco and Other Potential Areas.

Gloria L. Young, Executive Officer stated that the Commission has her staff recommendation before them. The staff report is public record that is available in Room 244 and was available for public review 72 hours prior to today's meeting. In addition, the Executive Officer announced that there is a pending lawsuit, Winchell Hayward vs. San Francisco Local Agency Formation Commission.

Public Comment

E. J. Simpson, Utility Consultant requests to make a few comments if the Subcommittee decides to accept the recommendation of Gloria L. Young, Executive Officer.

Chair Eisenberg stated that the Subcommittee cannot make a final decision, only a recommendation to the full Commission. The Subcommittee is considering a full recommendation at this time.

E. J. Simpson, Utility Consultant turned in a new draft of his proposal to the Subcommittee and the Commission Clerk.

Gloria L. Young, Executive Officer amended her recommendation to the effect that the Subcommittee recommend to the full Commission at its meeting of Friday, September 28 at 4:00 p.m. that E. J. Simpson, Utility Consultant, cease work on the project as of Monday, September 17, 2001.

Chair Eisenberg asked if legal counsel reviewed the Executive Officer's recommendation.

Gloria L. Young, Executive Officer stated that Donald Maynor, Esquire, was involved with her staff recommendation, steps, and procedures as of this date.

Donald Maynor, Esquire stated that he had represented SF LAFCo and the Executive Officer at the ex parte meeting in which Winchell Hayward had filed a lawsuit. They agreed that the purpose of the hearing was to schedule a full hearing before the judge as they were seeking an injunction against Mr. Simpson's contract.



It was agreed that they would pick a time well after the LAFCo Commission hearing to consider this matter. The hearing date will be October 10, 2001. Because it is pending litigation, there will be an opportunity to discuss the merits of Mr. Simpson's contract in a closed session at the Commission meeting of September 28. He would encourage that any discussion regarding his contract at this time be deferred until the September 28 Commission meeting.

Chair Eisenberg stated that public comment would be taken today. He understands that the Executive Officer's recommendation stems from her review of the reports from the last couple of weeks and has nothing to do with the lawsuit.

Donald Maynor, Esquire stated that the Executive Officer's recommendation occurred prior to the lawsuit. The lawsuit is a new issue that came up only a couple of days ago. He is alerting the Commission that because of the lawsuit there are a new set of circumstances that makes it difficult to discuss her recommendation because it involves talking about the merits of E. J. Simpson's, Utility Consultant's contract.

Chair Eisenberg stated that he prefers that the Subcommittee proceed with discussion and that the lawsuit and staff report are unrelated at this time. The Subcommittee will separate the two issues today.

Donald Maynor, Esquire stated any issue that the Executive Officer may raise in her report that involves the lawsuit, they would advise the Subcommittee not to discuss at this time. He would not want litigation to be jeopardized.

Commissioner McGoldrick asked if there is a connection between the discussion that could occur here and the issues raised in the litigation because the Subcommittee does not want to be in a position where they have discussed issues that still need deliberation.

Donald Maynor, Esquire stated that the problem is that the lawsuit that was filed identifies the first draft, and that is an issue that Ms. Young is focussing on.

E. J. Simpson, Utility Consultant stated that the first draft that he presented in two weeks as he was supposed to do were not drafts of his work—they were drafts of things that were being done. It was a mishmash of reports out of the computer, no conclusions, all of it to be modified. He pointed to Page 1.2 of the Response to the Request for Sphere of Influence Study and stated that was what he was contracted to provide in a professional manner. He wants the Commission to look at "Current Demand in all classes of service in San Francisco"--papers he has submitted show all documentation and he has backup. He was to discuss generation, transmission and identify resources. He has submitted papers that show that. He has extensive documents that support what he says. Under B, he is to project future San Francisco's demands under a set of assumptions--that has been done. He has it



documented, and there will be more added. Number 2, he is to talk about access to generation, transmission and distribution--he has done that and has documentation.

Commissioner McGoldrick asked where the documentation was.

E. J. Simpson, Utility Consultant stated that the documentation was in today's draft that he prepared and turned in today. The others were not truly drafts that he had done—it was just mishmash out of the computer. He does not want LAFCo to defend work that they have called his work that was something merely presented as things he had in his computer to work on. They were called Draft 1 and Draft 2. They were not Drafts 1 and 2. They were nothing but an indication that he was working. As we go through these items, he has completed approximately 90% of what was asked for. They talked about energy efficiency that he has pages on alternative energy that he has professionally done. He wants to acknowledge that he was told to stop work. To him that means that his pay stopped. He could not stop and let the Commission think that the other work were his drafts. On Wednesday, when he met with Ms. Young because she made her decision, she did not feel comfortable to take any more documents from him. If you move to Page 1-5 about a Municipal Utility District, he has addressed that fully. The document that he turned in today is not 100% complete. One week from Monday, he can submit the total document that he was contracted to do. He has completed a major part of the document; he has documentation to back it up. He requested that he continues to work and put this document together in a professional matter and when the Commission reviews the document, they can decide whether you pay him or not.

Commissioner McGoldrick asked Mr. Simpson if the document that he turned in today was the document that he continued to work on when he felt that he was not any longer going to be paid. He asked if the document could be dated with today's date.

E. J. Simpson, Utility Consultant stated that was correct. He has handed the document to the Subcommittee and the Commission Clerk. He has other copies as required.

Chair Eisenberg asked Mr. Simpson if Ms. Young had asked him to stop work as of September 17. He asked if he is trying to relay that he handed in a draft that was work in progress from his computer notes and now is submitting the document in report form. He asked if he would have had a few more days if he would have submitted this document rather than a document that led to her conclusion that he was not proceeding with the contract.

E. J. Simpson, Utility Consultant stated that he was not going to submit a document to anyone other than the Executive Officer. The Sunshine Ordinance did not permit that. She had no choice than to do what she did when she looked at what he sent her thinking that he was calling it work. There are other critical items that need to be provided. A transmission line from Newark to San Francisco that they have done a



lot of work on is not in the report yet. He needs a few more days to put the document in order, and he wants to continue to work on it.

Chair Eisenberg asked if the document that he handed the Commission has generated additional time from September 17.

E. J. Simpson, Utility Consultant stated that he has not come here today with those hours. There were substantial hours—50 to 60 hours.

Chair Eisenberg stated that he would ask the Executive Officer to take that into consideration and ask Mr. Simpson to submit an invoice for the additional work, and then counsel would be consulted as to the legality of considering the invoice.

E. J. Simpson stated that he could do the contract properly and within the timeframe. If the Commission elects that he would not be paid, then he accepts that.

Chair Eisenberg asked Mr. Simpson if he felt that the Subcommittee was duty bound to accept the Executive Officer's recommendation as she has been the one looking over the report.

E. J. Simpson, Utility Consultant agreed that the Executive Officer had the right to stop her pay and that he would provide the Commission with a quality report. He does not want the Commission defending the first "mishmash" that came out of the computer.

Gloria L. Young, Executive Officer stated that as she was negotiating the contract with Mr. Simpson, they agreed that every two weeks from the initial date of the contract, which was August 27, that Mr. Simpson and she would have a conversation to indicate how his work was progressing. On September 10, instead of a phone conversation, Mr. Simpson sent her a first draft. She was not able to review the first draft until Wednesday evening because of the tragedies that occurred on September 11. On Friday, September 14, she had a conversation with Mr. Simpson and she indicated to him her concerns at that time and asked him to cease work. He indicated that he had a better draft that he wanted her to review that he sent by e-mail. She indicated that she would review the draft over the weekend and would contact him on Monday, September 17, which she did. Mr. Simpson indicated in his e-mail that attached was his work to date and that any supporting footnote information and references with respect to the document would be sent to her no later than Monday, September 17. Monday, she had the document that she reviewed that weekend. That is what the Executive Officer labeled as the second draft and that is when she asked him to cease work.

Chair Eisenberg stated that E. J. Simpson has handed in his third draft, which is what the Commission may resort to, and he thinks he should submit his invoice.

A member of the public discussed the issue of access to records.



Public Hearing Closed

Donald Maynor, Esquire stated that the work that Mr. Simpson submitted after he was told to cease work was at his own risk. Whether he would be paid for any work thereafter would be decided on Friday, September 28, at the Commission hearing. Only the Commission can counter the Executive Officer's decision. One of the conditions on the stipulation was that the LAFCo would not pay Mr. Simpson under his contract until the court had an opportunity to review the issue. That was the essence of the lawsuit. They agreed to a later date in order to allow the LAFCo to meet and discuss the issue.

Chair Eisenberg asked Donald Maynor, Esquire if the Subcommittee had asked the Executive Officer today to start the bid process, if it would be possible to bring someone in at an extremely high speed working with what Mr. Simpson has provided, and get something done in the next couple of weeks.

Donald Maynor, Esquire stated that there are people out there that may be available. The Commission would want to look at the work that was accomplished and look at supplementing that work. He can bring in preliminary ideas at the Friday hearing.

Chair Eisenberg asked if the Subcommittee could ask the Executive Officer to put a Request for Proposal out to bid today.

Donald Maynor, Esquire stated that it seems to be a Commission decision.

Chair Eisenberg stated that the Subcommittee had authorized the Executive Officer to put it out for bid previously. He asked legal counsel what would prevent her from starting to work on getting the bid out on the presumption that the Commission will proceed?

Donald Maynor, Esquire stated that the process could be started informally immediately.

Chair Eisenberg stated that he would like to start the process immediately.

Gloria L. Young, Executive Officer stated that she has the ability to prepare a separate Request for Proposal.

Chair Eisenberg stated that the available vendors can be canvassed and tell them that we are in this situation and that their Commission is committed to getting something out quickly, that they have Mr. Simpson's work and the vendors may be able to work with Mr. Simpson.

Donald Maynor, Esquire stated that Mr. Simpson has a contract with the LAFCo at this time and that should be respected. What the Subcommittee is doing is asking

Ms. Young to identify the alternatives and maybe do something different with the contract.

Commissioner McGoldrick asked what the utility of the document that E. J. Simpson submitted today is.

Donald Maynor, Esquire stated that the document was presented after a request to stop work so it is a document outside of the contract. He is requesting that the Subcommittee accepts and reviews it. He thinks that may be appropriate, but the Subcommittee is not accepting it as a document under the contract which compensation has been agreed to.

Chair Eisenberg asked if the Commission decides that the document is of value, if they could proceed and honor an invoice.

Donald Maynor stated that the Commission can decide, but right now there is no legal obligation to pay for the additional work.

Chair Eisenberg stated that the public should understand that this is the first LAFCo that San Francisco has had, and they have gone a long distance with remarkable speed and dispatch. In that process, they have relied on the excellent professional advice of staff and they will continue to do that. It appears now that they have excellent legal counsel and he thinks this is a phase in a long process. They will proceed and will not be stopped. Ms. Young will continue with the process, and they will do whatever is necessary to get the information to the public.

Chair Eisenberg moved to pass on the recommendation of the Executive Officer with the recommendation of this Committee; Commissioner McGoldrick seconded. No further discussion or objection.

VOTE:

AYES: Commissioner McGoldrick and Chair Eisenberg

NOES: None

ACTION: Passed that the Subcommittee recommend to the SF LAFCO to approve notice to E. J. Simpson, Utility Consultant, to cease work on the agreement dated August 1, 2001 as of September 17, 2001.

4. Future Agenda Items

Chair Eisenberg stated that he had heard from the professor at the University of San Francisco that the internship program has been implemented. Commissioner McGoldrick and they have interns working for them. But not everybody else has and because of timing, they have had to move some of their interns into other programs.

He thinks the program is going to be successful. He asked the Clerk to contact the USF professor and tell her that we noted the communication and are sorry that we were not able to take advantage of all of the students that were provided. The Commission will make sure that in the next go around there will be more thorough contact. He requested that we ask the professor to talk to the LAFCo Commission and give an evaluation of how the internship program is going.

5. Public Comment on Items not on the Agenda

No Public Comment.

6. Adjournment: The meeting adjourned at 10:58 a.m.

